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FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

March 20, 1997

MAR 25 1997

MEMORANDUM

EXECUTIVE SESSION

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBMITTED LATE

SUBJECT: Request to Place on the Agenda the General Counsel's Report
in MUR 3774

The attached General Counsel's Report recommends that the Commission deny the National Right to Work Committee's Motion to Quash the Subpoena to Produce Documents and Order to Submit Written Answers and authorize civil suit to compel compliance. In addition, the report recommends approval of a bank subpoena.

We request that this matter be placed on the March 25, 1997 Executive Session agenda in light of the U.S. District Court's recent order in the pending Section 437g(a)(8) suit in this matter, DSCC v. FEC, Civ. A. No. 96-2184 (JHG)(D.D.C. November 25, 1996).



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *VCS*

DATE: March 20, 1997

SUBJECT: MUR 3774-Memo to the Commission

The attached is submitted as an Agenda document for the Commission Meeting of March 25, 1997

Open Session _____
Closed Session X

CIRCULATION

72 Hour Tally Vote ☐
 Sensitive ☐
 Non-Sensitive ☐

24 Hour Tally Vote ☐
 Sensitive ☐
 Non-Sensitive ☐

24 Hour No Objection ☐
 Sensitive ☐
 Non-Sensitive ☐

Information ☐
 Sensitive ☐
 Non-Sensitive ☐

Other ☒
Sensitive-Circulate on Blue paper

DISTRIBUTION

Compliance ☒

Audit Matters ☐

Litigation ☐

Closed Letters ☐
 MUR ☐
 DSP ☐

Status Sheets ☐

Advisory Opinions ☐

Other (See Distribution below)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Right to Work Committee) MUR 3774
League of Catholic Voters)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 1, 1995, the Commission found reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer, ("NRSC") violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i) by making payments of non-federal funds to four organizations to perform GOTV activity in support of specific federal candidates in targeted Senate races, after having nearly exhausted its own ability to support the candidates under then-applicable limits of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Commission also found reason to believe that three of the four organizations, including the Coalitions for America, violated 2 U.S.C. § 441b(a) by making what may have constituted prohibited in-kind corporate contributions to federal candidates, the NRSC, or both, by coordinating GOTV activity through the NRSC. At the same time, the Commission approved Subpoenas for Documents and Orders to Submit Written Answers to NRSC and the three organizations.

The discovery response of Coalitions for America ("CFA") revealed that it made grants to two other organizations, the National Right to Work Committee ("NRTWC") and the League of Catholic Voters ("LCV"), immediately after receiving NRSC's payments in October and November 1992. Published accounts indicated that the NRTWC had taken out newspaper ads

and sent two direct mailings to its members favorably contrasting the views of Republican Senate candidate Paul Coverdell with his opponent Wyche Fowler in connection with the November 24, 1992 Georgia runoff election between those candidates. Although no information was found concerning 1992 election-related activities by LCV, an organization by that name was incorporated in Virginia in 1994 by individuals with a prior connection to the Christian Coalition, and LCV and the Christian Coalition jointly ran a voter guide ad in local Catholic newspaper in connection with Virginia's 1994 U.S. Senate race.

In an effort to ascertain the connection, if any, between the NRSC's payments to CFA, CFA's grants to NRTWC and LCV, and any 1992 election-related activities undertaken by NRTWC and LCV, on February 4, 1997, the Commission approved Subpoenas to Produce Documents and Orders to Submit Written Answers to NRTWC and LCV. The Subpoenas and Orders sought information and documents relating to the purpose and use of CFA's grants and any election-related activity undertaken by NRTWC and LCV. The Subpoenas/Orders were issued to NRTWC and LCV as witnesses given the limited information regarding LCV and this Office's desire not to expand the number of respondents in this matter in light of the U.S. District Court's November 25, 1996 order in the related Section 437g(a)(8) suit. That order urged prompt action in this matter. See DSCC v. FEC, Civ. Action No. 96-2184 (JHG) (November 25, 1996).

On February 21, 1997, the NRTWC submitted a timely Motion to Quash the Commission's Subpoena and Order.¹ Attachments 1 (Subpoena) and 2 (Motion to Quash). Moreover, on February 26, the president of LCV submitted a letter stating that his organization did not exist in 1992 and therefore the subpoena must be a mistake. Attachment 3.

As discussed below, this Office recommends that NRTWC's motion be denied because the Subpoena/Order is enforceable under prevailing law. This Office further recommends that the Commission authorize the General Counsel to institute a civil action absent full compliance within ten days of receipt of notification of its decision. Additionally, because we are unable to otherwise identify the organization known as League of Catholic Voters to whom CFA gave a grant, this Office also recommends that the Commission approve the attached subpoena to First Union National Bank of Virginia to identify the individuals associated with the account into which the LCV check was deposited. Attachment 4.

II. MOTION TO QUASH

It is well established that an administrative agency subpoena will be enforced so long as it was issued for a proper purpose, the information sought is relevant to the purpose, and the statutory procedures were observed. See United States v. Powell, 379 U.S. 48, 57-58 (1964); United States v. Morton Salt Co., 338 U.S. 632, 652 (1950); SEC v. Blackfoot Bituminous, Inc., 622 F.2d 512, 514 (10th Cir.), cert. denied, 449 U.S. 955 (1980); Federal Trade Commission v. Invention Submission Corp., 965 F.2d 1086, 1089 (D.C. Cir. 1992); Government of Territory of Guam v. Sea-Land Serv., 958 F.2d 1150, 1154-55 (D.C. Cir. 1992).

¹ NRTWC states it received the Subpoena and Order on February 14. Commission regulations require a motion to quash a subpoena to be filed within five days after receipt of the subpoena. 11 C.F.R. § 111.15(b). Consequently, NRTWC's filing on February 21 constitutes a timely submission. See 11 C.F.R. § 111.2 (Saturdays, Sundays and legal holidays are excluded from the computation of time when the period of time prescribed is less than seven days).

The Commission followed proper statutory procedures when issuing the Subpoena and Order in this matter. Furthermore, the Subpoena and Order were issued for a proper purpose and are relevant to that purpose: the investigation of possible violations of Section 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).

1. Statutory Procedures

The Commission has broad authority to administer and enforce the Federal Election Campaign Act of 1971, as amended. See 2 U.S.C. § 437c(b)(1), 437d, 437g and 438. In order to investigate whether a violation has occurred, the Commission, by an affirmative vote of at least four of its members, need determine only that there is "reason to believe" a violation has occurred. 2 U.S.C. § 437g(a)(2). Once this threshold is reached, the Act authorizes the Commission to conduct investigations into possible violations of the Act, and grants the Commission power to require *any person* to produce documentary evidence related to its investigation and to require written answers to questions. 2 U.S.C. § 437d(a)(1) and (3).

NRTWC appears to raise a procedural challenge in its argument that the Subpoena and Order constitute an attempt to secure NRTWC's admission to federal election law violations or evidence to support such violations, without a complaint having been filed or a "reason to believe" finding having been made. Attachment 2 at 2. However, as made clear in the cover letter accompanying the Subpoena and Order, the discovery was directed to NRTWC as a witness. Attachment 1 at 1. As such, the subpoena seeks information from NRTWC relevant to an investigation of possible violations by others -- in this case, the NRSC, and possibly CFA --

against whom the Commission has made reason to believe findings. Thus, the Commission's statutory mandated procedures have been followed in this case.

It is true that information obtained from NRTWC or others may raise questions regarding possible violations by NRTWC. Because of that possibility, this Office in fact considered recommending that the Commission make a reason to believe finding against NRTWC at the time it requested approval of the Subpoena and Order. However, as previously noted, this Office determined not to expand the number of respondents at that time in light of the District Court's order in DSCC v. FEC. Even if the Commission were to make reason to believe findings against NRTWC in the future, however, NRTWC would receive a factual and legal analysis setting forth the factual basis and legal theory underlying the finding and be given an opportunity to respond and present any additional relevant facts.

2. Proper Purpose and Relevance to that Purpose

Additionally, the questions propounded to, and the documents requested of NRTWC were issued for a proper purpose and were relevant to that purpose: the investigation of possible violations of the Act and Commission regulations by the NRSC and others via the use of soft money to influence the election of specific federal candidates, and the possible coordination of election-influencing activities. Evidence adduced so far has shown that the NRSC made soft money payments to several organizations including CFA, just prior to U.S. Senate elections and that CFA immediately thereafter made grants to two other organizations, including the NRTWC. Published accounts also show that NRTWC simultaneously or subsequently took out ads and sent direct mailings favorably contrasting positions of the Republican Senate candidate with his

Democratic opponent in a hotly contested runoff election where the NRSC had exhausted its legal contribution and expenditure limits. Accordingly, the interrogatories and document requests directed to NRTWC are narrowly tailored to elicit information concerning the reasons for and use of CFA's grants, the identity of those with knowledge of the grants and the specific federal-election related activities NRTWC engaged in during the period it received the grants. This information will help the Commission determine whether NRSC's soft money payments were intended to influence the election of specific U.S. Senate candidates and will identify individuals with relevant information for possible depositions.

3. Constitutional Concerns

NRTWC makes two additional broad arguments that appear to raise constitutional challenges to the Subpoena/Order: 1) that the Subpoena/Order as a whole, and particularly a request for copies of any 1992 Form 990 tax returns filed by NRTWC, somehow threatens and chills the First Amendment speech and associational rights of NRTWC and its supporters without a compelling governmental interest, and 2) that the Subpoena/Order contains language that is constitutionally overbroad and vague and seeks information outside the Commission's jurisdiction in certain requests for communications that may not constitute "express advocacy."

Attachment 2 at 2 and 3.²

Respondents have failed to show how the Commission's Subpoena/Order threatens or chills its First Amendment rights. In fact, the interrogatories and documents requests are

² NRTWC also uses as a basis for its motion the fact that the envelope which contained the Subpoena/Order was damaged and that an attachment to the Subpoena/Order was missing. This Office remailed to NRTWC a copy of the Subpoena/Order with the attachment on February 20. NRTWC counsel verified receipt of the additional mailing in a February 26 phone call.

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narrowly tailored to seek information relevant to matters specifically within the Commission's jurisdiction: the possible use of prohibited funds by a party committee and perhaps others to influence a federal election. The interrogatories and document requests seek information regarding two discrete financial transactions involving the receipt and spending of two checks given to NRTWC. The requests also seek limited information about specific federal election-related activities taken by NRTWC within a discrete three month period. Indeed, some of those activities, such as direct mailings containing the names of federal candidates, have already been publicly documented. See e.g., Grover Norquist, *Coverdell's Winning Formula*, *The American Spectator*, March 1993 at 40 and Grover G. Norquist, *Rock the House* (1995) at 58-59. Moreover, the request that NRTWC specifically objects to, providing copies of any Form 990 tax returns filed by NRTWC in 1992, is a request for a document that NRTWC is already required to make available for public inspection. Production of that document will give some indication of how much of NRTWC's 1992 income originated from CFA's \$60,000 in grants and perhaps how much of NRTWC's income was directed to election-related activities.

NRTWC also appears to raise a jurisdictional objection to information sought about communications containing the names of federal candidates, citing *Buckley v. Valeo*, 424 U.S. at 42-43 & 80 and *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986). NRTWC apparently interprets those cases to mean that the Commission may only inquire into NRTWC's communications and activities constituting "express advocacy." Attachment 2 at 3. On the contrary, communications falling short of express advocacy are clearly within the Commission's jurisdiction if, for example, they are coordinated. Moreover, communications and activities

falling short of express advocacy are relevant to this investigation if party soft money funds were given to another entity to undertake activity for which the party would have had to use permissible funds. Additionally, requesting information regarding communications containing express advocacy would require that a legal conclusion be made which may well differ from any conclusions drawn by the Commission.

Finally, NRTWC points to Interrogatory and Document Request Number 3 to illustrate its concerns about vague and overbroad language. Attachment 2 at 3. Those requests seek information and documents about NRTWC's October-December 1992 activities "relating to federal elections." Attachment 1 at 7-8. In fact, those requests attempt to define the types of activities for which information and documents are sought. In any event, to the extent NRTWC has questions about whether certain activities not described are included in this request, this Office can discuss those concerns with NRTWC's counsel.

Therefore, based on the foregoing, this Office recommends that the Commission deny NRTWC's Motion to Quash the Subpoena/Order. Further, this Office cannot predict whether NRTWC will comply with the Commission's Subpoena/Order if its motion is denied. Accordingly, this Office also recommends that the Commission authorize this Office to file civil suit to compel compliance with the Subpoena/Order should NRTWC fail to comply voluntarily.

III. LEAGUE OF CATHOLIC VOTERS BANK SUBPOENA

In response to the Commission's Subpoena/Order, the president of the League of Catholic Voters, a Virginia corporation, submitted a letter stating that his organization did not exist in 1992 when the CFA gave the grant to an organization with the same name. Attachment 3. In a

follow-up phone call with staff of this Office, LCV president Frank Nassetta explained that he had not even thought to form LCV until 1994, after several years of working with other organizations such as the Christian Coalition. Nassetta stated that his organization did not exist in any other form until it was incorporated in 1994 and never received any money from the CFA, an organization he had never heard of. According to Nassetta, prior to LCV's incorporation, his attorney did a search to determine whether any other Virginia corporations bore the name "League of Catholic Voters" and found none. The attorney made no attempt to determine whether any organization bearing that name existed elsewhere.³

In order to identify the recipient of CFA's \$75,000 grant, this Office recommends that the Commission approve the attached subpoena to First Union National Bank of Virginia.

Attachment 4. A copy of the grant check produced by CFA bears an endorsement consisting only of an instruction to deposit the check into a particular account at 1st American Bank, Reston, Virginia. First Union is the successor bank to 1st American. The Subpoena seeks only account identifying information, i.e., the name and address of the customers associated with the account and the type of account into which the check was deposited. Consequently, the notification requirements of the Right to Financial Privacy Act do not apply. See 12 U.S.C.

§ 3413(g).

IV. RECOMMENDATIONS

1. Deny the National Right to Work Committee's Motion to Quash the Subpoena to Produce Documents and Order to Submit Written Answers.

³ In his February 20, 1997 letter, Nassetta suggests that the Commission may have confused his organization with one called "The Catholic League for Religious and Civil Rights." Attachment 3. However, CFA's grant check is clearly payable to an organization called "League of Catholic Voters."

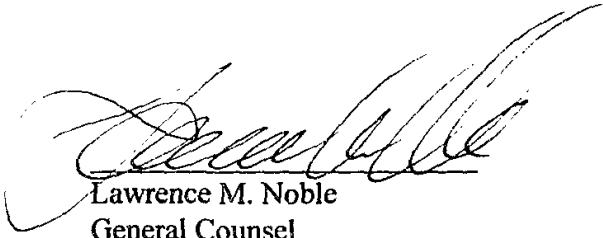
2. Authorize the Office of the General Counsel to file civil suit to compel compliance by the National Right to Work Committee with the Commission's Subpoena to Produce Documents and Order to Submit Written Answers.

3. Approve the attached Subpoena to First Union National Bank of Virginia.

4. Approve the appropriate letters.

Date

3/20/97


Lawrence M. Noble
General Counsel

Attachments

1. Subpoena and Order
2. Motion to Quash
3. Letter from LCV
4. Subpoena to First Union

Staff assigned: Dawn M. Odrowski